

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
Judicial Independence in Central America

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Good afternoon, Co-chair McGovern and Co-chair Smith. Thank you for the opportunity to appear before the Tom Lantos Human Rights Commission today on behalf of the Seattle International Foundation. We are a small foundation focused almost exclusively on promoting the rule of law, ending forced migration, encouraging equality, and strengthening civil society in Central America.

Corruption is the most serious threat to democracy, stability, and prosperity in Northern Central America today.

Corruption permeates electoral systems that, in turn, infect political parties and produce legislatures and governments that are deeply compromised eroding their ability to provide basic services like healthcare, education, and jobs for their people, or respond to emergencies such as hurricanes or the Covid-19 pandemic.

Corruption in the political/electoral system is perpetuated through the judiciary where the appointment of judges, supreme court magistrates, and attorneys general is often rigged to ensure impunity for those engaged in pillaging the state. Both Guatemala and El Salvador have seen major reversals in the independence of their justice systems in the last few days and weeks.

In El Salvador, Supreme Court Magistrates and the Attorney General were forced out and, in some cases, forced to resign on May 1 when President Bukele's party took complete control of the national assembly. The apparent reason for this action was their insufficient loyalty to the President's agenda or daring to limit his authority. According to a recent statement by OAS Secretary General Luis Almagro, the new Attorney General has blocked investigations into high level corruption within Bukele's government.

In Guatemala, a highly qualified magistrate was pushed aside on a technicality while others linked to corruption by a Special Prosecutor were confirmed for seats on the Constitution Chamber by a legislature dominated by the President's allies. The President publicly criticized

that Special Prosecutor claiming he was pursuing a leftist agenda, and the very Constitutional Chamber which now includes those linked to corruption are now considering a claim of unconstitutionality leveled against the entire Special Prosecutor's office.

These are just the latest signs of how politicians are undermining the independence of the judiciary in Central America, but there is long-standing evidence of similar manipulations and rot in the Nicaraguan and Honduran judicial system as well. The Ortega government has, over the past several years, systematically eroded the independence of all oversight and accountability mechanisms including the country's comptroller as well as its judiciary. The regime has utilized a rubber-stamp congress to approve numerous laws specifically designed to undermine independent political actors, the independent press, and independent civil society. In the past few days, the government has utilized these laws to detain, arrest, and threaten many in the political opposition on trumped up and phony charges, all to disqualify them as electoral candidates that could threaten the Ortega government in November's general election. There is no independent judiciary to appeal to and these abuses continue as we speak.

In Honduras, the much-delayed trial in the murder of indigenous and land rights activist Bertha Caceres is an example of the weakness of the justice system. Yet another example is the absolute failure of the Honduran state, including the Courts, to comply with and enforce rulings by the Inter-American Court regarding the Garifuna Community of Truinfo de la Cruz involving land conflicts with a tourism company. The Inter-American Court ruled in favor of the Garifuna community in 2015 but the Honduran state has failed to enforce it since.

Weak justice institutions that lack political independence not only undermine the rule of law, but they are vulnerable to control and manipulation by criminal actors such as organized crime and drug traffickers. In many cases, courts and prosecutors have become indistinguishable from those criminal actors. Corruption in the justice system guarantees impunity for all kinds of crimes including for bankers engaged in money laundering and politicians directly involved in drug trafficking.

Fighting corruption and promoting the rule of law is not a left wing or right-wing agenda, it is part of the democratic agenda to ensure that the rule of law is strong, and governments and criminals are accountable.

Furthermore, as my co-author and I wrote in an article earlier this year for Florida International University "corruption and hopelessness are overlooked drivers of migration." A general feeling of hopelessness, measured as Subjective Well-being, is a strong indicator of a person's intent to migrate and holds true whether or not one experiences violence or unemployment directly. As a Honduran mother told us in a migrant shelter in southern Mexico, and I paraphrase, "When I see that the President and politicians are engaged in corruption, I know they do not worry about me or my daughter. We have nothing in Honduras, and no one cares about us."

While the responsibility for addressing this corruption resides squarely with the Central American political and economic elites that care more about protecting their privilege than creating an even playing field for all, the United States also shares some responsibility. For too long the United States has looked the other way when there is evidence of corruption and abuse of power.

We do so when we think other interests are at stake – the Cold War, cooperation in fighting drug trafficking, ending irregular migration, or in the interest of promoting trade. We have tolerated corruption in exchange for something of greater importance to us. But as someone who has been engaged in Central America since the early 1980s, having lived in Honduras and traveled throughout the region for nearly 35 years, it is clear that the biggest losers in those trade-offs are the United States and, especially, the people of Central America that continue to suffer poverty and inequality, extreme violence, and a sense of hopelessness.

U.S. policy, under Democrats and Republicans, has seen the region as a series of problems, crisis, disasters, and threats. We respond in the moment, and often try a “kitchen-sink” approach. A Marshall-plan for Central America. We argue over aid amounts.

In the process we lose sight of the essential thread running through all of these issues – a weakened and, at times, absent rule of law, pervasive corruption, and democratic governance that has been distorted and manipulated to serve narrow interests. The most important instruments and strategy to counter these is to build a competent and politically independent judiciary that is a source of impartial justice, that holds the powerful and corrupt accountable, and that builds confidence and trust in the impartiality of the state. This is the starting point to building a resilient and sustainable Central America that can resist corruption and drug trafficking, is stable, and able to provide opportunities for its people.

So here are a handful of things that I believe the United States should consider in building such a future:

- 1) Develop a bipartisan commitment to a long-term approach to fighting corruption and building the rule of law in Central America. This commitment existed in 2014-2017 and can be reconstructed again by you and others.
- 2) Support and champion those few remaining members of the courts and prosecutor’s offices that have demonstrated political and prosecutorial independence.
- 3) Provide them with the technical, financial, and political support they need to succeed by creating a buffer between them and the corrupt classes in the region.
- 4) Where government institutions are broken and corrupt, redirect our assistance to independent civil society organizations that have a demonstrated track record in fighting corruption. Last week the Seattle International Foundation had the honor of helping launch a new regional anti-

corruption mechanism based on the work of 10 brave and pioneering organizations from all three countries. This is the first such effort ever attempted at the regional and international level, and we were happy to receive strong backing for this effort from the U.S. Department of State, the Canadian and Swedish governments, and European Union missions in Central America.

5) The U.S. needs to stand up for and insist that countries comply with the separation of power clauses embedded in the Democratic Charter. Nicaragua is in clear violation, but we are increasingly convinced that El Salvador, Guatemala, and Honduras are doing exactly the same.

6) The U.S. must insist that, as part of their Democratic Charter commitments, each country define and respect a transparent public vetting process for the selection of judges, magistrates, and prosecutors including Attorneys General. In some cases, these processes exist, in many they do not. They do not always result in good selections, but they contribute to constructing a process that is merit-based and not simply the result of a political negotiation.

7) Use a combination of carrots and sticks to incentivize political will and bend the arch towards justice and rule of law. Carrots can be in the form of assistance or privileges that reward positive behavior. Sticks should include sanctions for those directly involved in corruption. These could include public designations, and visa removal for the individual and family members, among others.

Thank you and I look forward to taking your questions.